IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CEA No. 8 of 2007
Date of decision 16.4.2007

Commissioner of Central Excise Commissionerate, Jalandhar
..Appellant

Versus

Chief Engineer, Ranjit Sagar Dam, Pathankot .. Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE RAJESH BINDAL

PRESENT: Mrs.Daya Chaudhary, Assistant Solicitor General of India, for the appellant.

M.M.Kumar, J.

This appeal filed under Section 35 G of the Central Excise Act, 1944 is directed against the order dated 23.1.2006 passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi. The short issue raised before this Court is as to whether the assessee- respondent is entitled to exemption from payment of excise duty as he is using the concrete mix as against ready mix concrete.

The facts of the case are that the assessee has been executing the project of construction of Dam known as Ranjit Sagar Dam. It prepared concrete mix at site and used the same in the construction of the Dam. The revenue raised the demand for payment of duty by alleging that the concrete mix used by the appellant would be covered under the tariff sub heading No. 3824.20. The adjudicating authority placing reliance on the circular of the Board classified the concrete mix under sub heading 3824.20 and raised the demand for the period 1.3.1997 to 1.6.1998. The adjudicating authority also imposed penalty and interest. Referring to the notification No., 4/97-CE, the Tribunal observed as under:

" It can be seen that the exemption granted vide above

notification, by Government to the exicsable goods, is in the public interest and that also after being satisfied that it is so. To our mind the exemption granted to “concrete mix” at serial No. 51, “ manufactured at the site of construction for use in construction work at such site”, should not be given a narrow meaning as to include on “Concrete Mix” and exclude from its ambit Ready Mix Concrete manufactured at site. It was the contention of learned DR that in this case also the concrete mix is not manufactured at Dam site, but away from the site and transported hence would not be eligible for exemption as it would become “Ready Mix concrete”. It is a known fact that the sites of dams are at places surrounded by the hills and there may not be any place near the “Dam Site” to erect a concrete mixing plant. The concrete mixing plant, by necessity has to be located at place within the vicinity of the Dam Site, which may depend upon the contours of the area where the Dam is being constructed. This itself would not exclude the concrete mix manufactured at this plant from exemption granted under serial No.51 of the Notification No. 4/97-CE. We find strength in this conclusion from the wording of the entry at serial No.51. The heading to Table to notification in column no.2 talks about the “chapter or heading No. or sub heading No. “ that is sought to be exempted by the notification. In the case before us the entry at column no.2 at serial no.51 says only “38” i.e. it refers to only Chapter No. The said entry does not refer to any heading No. or sub heading No. To our mind the Central

Government had every intention to exempt all kinds of "concrete Mix" from payment of duty, which is very evident from the fact that, the said notification in respect or many items indicates heading No. and sub heading Nos. specifically. If the law makers did not intend to exempt " Ready Mix concrete" falling under Chapter Sub Heading "3824.20/3824.90" they would have categorically said so, by indicating in the serial no.51 only the specific heading Nos. which are eligible for exemption. Since, the notification intends to cover all the "Concrete Mix manufactured at the site of construction for the use in construction work at such site", it would also cover the "Ready Mix Concrete" in its ambit of exemption."

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" The above said order of the Hon'ble High Court fortifies our view that benefit of exemption under notification No. 4/97 is available to Ready Mix Concrete also provided it is 'manufactured at the site of construction".

As we have held above that the entry at serial No.51 of notification no. 4/97, exempts all "concrete Mixes" which fall under Chapter 38, and as it is not disputed that the production of the appellant gets cov ered under Chapter 38, the reference is answered in favour of the appellants. We also allow the appeal since no other issue arises in this case".

We have heard the learned counsel for the revenue who has vehemently argued that the production of mixed concrete by the assessee must be regarded as ready mix concrete which is an excisable item.

According to the learned counsel the concept of mixed concrete and ready mix concrete are two different concepts and the later is excisable whereas the former is exempt in terms of the notification No. 4/97 dated 1.3.1997. She has maintained merely because the mixed concrete has been prepared at the site or brought manufactured from a distance would not be the deciding factor.

After hearing the learned counsel, we are of the considered view that the appeal lacks merit and is thus liable to be dismissed. There are categorical findings recorded by the Tribunal that in the construction of Ranjit Sagar Dam mixed concrete used to be prepared at site. It is only on account of hilly area that the plant was kept at some distance would not be necessarily bring the production of mixed concrete within the mis-chief of taxable entry reproduced by item No.3824.20. The view taken by the Tribunal does not suffer from any legal infirmity warranting out interference. Accordingly, the appeal fails and the same is dismissed.

(M.M.Kumar)
Judge

(Rajesh Bindal)
Judge

16.4.2007
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